

OGC HAS REVIEWED.

TAB

12 September 1955

MEMORANDUM FOR THE RECORD

SUBJECT: Coverage under the Federal Employees' Compensation Act of Certain WOC Consultants

1. The question has arisen whether a WOC Consultant, who is employed by a company which is an independent contractor with CIA, and whose consulting duties with CIA are part of the contractual obligations of his employer, can be covered under the FECA, and whether this would present any problems of conflict of interest or of dual compensation.

2. WOC Consultants may be covered under the Act by its express terms. 5 USC 790 provides that the term "employee" as used in the Act, includes "persons rendering personal services of a kind similar to those of civilian officers or employees of the United States to any department, independent establishment, or agency thereof (including instrumentalities of the United States wholly owned by it), without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by an Act of Congress or in which provision is made by law for payment of the travel or other expenses of such person."

3. In general, the coverage provided by the FECA to eligible persons involves the provision of medical services or the reimbursement of medical expenses, as well as the provision of monthly support or death payments bearing a relation to earnings prior to the covered injury. 5 USC 762 provides a formula for determining the compensation due an employee serving "without pay or at nominal pay."

4. Without the complicating factor of the independent contracting company, then, a WOC Consultant meeting the criterion of similarity of duties and the other criteria necessary for application of the Act, would be covered thereunder and receive benefits comparable to those of a salaried employee.

5. In the case at issue, the dual compensation statutes are not applicable since their prohibition is generally against the receipt of two salaries from the Government. The conflict-of-interest statutes, however, are definitely in point.

(a) 5 USC 99 and 18 USC 283 and 284 generally prohibit the prosecution of claims against the Government by present

or former officers and employees, and are not directly applicable here.

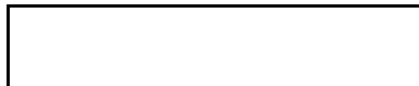
(b) /§ USC 281 provides a criminal penalty for any "officer or employee of the United States . . . (who) directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . ."; this provision might be applicable

(c) 18 USC 1914 provides a criminal penalty for the employee who receives any salary "in connection with his services as such an official or employee from any source other than the Government of the United States . . .," and also for the person or firm paying such salary; this provision seems clearly applicable.

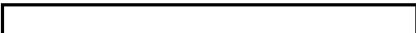
6. In the present Congressional climate, it is probable that, although a WOC Consultant is not in the usual sense of the term an employee of the Government, the appointment of an individual ~~or~~ Consultant in the situation described might raise charges of impropriety. It could even be suggested that there was an element of inconsistency in considering the identical services of a person those of an "employee" for the purposes of applying the FECA, while not those of an employee for purposes of the conflict-of-interest statutes. (In actual fact, "employee", as used in the FECA, is a term of art which includes persons not generally considered officers or employees of the Government. However, it could further be argued that the consultant under these facts is not an employee even in the special sense of the Act, because his services have been accepted only formally under authority of any Act of Congress, and were both offered and accepted primarily under the aegis of the contract between CIA and his civilian employer.)

7. In summary, appointment of a person in the circumstances cited as a WOC Consultant, in order to bring him under the FECA, is probably illegal and almost certainly improper.

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Office of General Counsel